

Attorney for Plaintiff, CONTRA PIRACY

CONTRA PIRACY, a non-profit)
Association, organized and existing)
under the laws of Switzerland, and)
Assignee of the copyright in “All Things)
Fall Apart”, a motion picture)

Plaintiff,)

v.)

DOES 1 – 2919,)

Defendants.)

Case No.: C13-1133 EDL

**PLAINTIFF'S BRIEF ON ORDER
TO SHOW CAUSE REGARDING
STANDING**

Plaintiff Contra Piracy entered into an Agreement with Hannibal Inc. d/b/a Hannibal Pictures (hereinafter “Hannibal Pictures”) on November 13, 2012, for Contra Piracy to provide

1 intellectual property rights management services, including enforcement of copyrights, to
 2 Hannibal Pictures. Declaration of Richard M. Schneider (“Schneider Decl.”) ¶ 6. Hannibal
 3 Pictures is the de facto owner of the copyright in the motion picture “All Things Fall Apart” (also
 4 known as “Things Fall Apart”), among many other copyrights. Schneider Decl. at ¶ 7. The
 5 copyright in “All Things Fall Apart” is the subject of the Agreement and relationship between
 6 Contra Piracy and Hannibal Pictures. Id. at ¶ 8.

7 As part of the member services agreement between Contra Piracy and Hannibal Pictures,
 8 Hannibal Pictures executed a “Limited, Exclusive Assignment of Copyright Agreement”
 9 (hereinafter “Assignment”) which is provided here as Exhibit A. Id. at ¶ 9. The list of
 10 copyrighted works held by Hannibal Pictures integrated into the Assignment, known as
 11 “Appendix 1,” is also provided as Exhibit B¹. Id. at ¶ 10.

12 In Righthaven LLC v. Hoehn, Case No. 11-16751, 2013 U.S. App. LEXIS (9th Cir. May
 13 9, 2013), the Ninth Circuit found that Righthaven LLC did not have standing because it had
 14 received only a bare “right to sue” on the copyright rather than a conveyance of an exclusive
 15 right in the copyright. In other words, ownership of one or more of the exclusive rights of
 16 copyright enumerated under 17 USC § 106 is required for a plaintiff to have standing to sue on
 17 the copyright.

18 Here, under the Assignment executed by Hannibal Pictures, Plaintiff holds the rights to
 19 make copies and to distribute “All Things Fall Apart” over the P2P/BitTorrent protocol.
 20 Schneider Decl. at ¶ 11. This Assignment also contains a grant to Plaintiff of the right to enforce
 21 the copyright in “All Things Fall Apart.” Id. at ¶ 12. Such agreements are typical in the creative
 22 industries, where the right to copy and/or distribute a copyrighted work will be limited
 23 geographically or to a particular medium, such as digital video discs or online streaming. Id. at ¶
 24 13.

25 The P2P/BitTorrent protocol is a primary medium through which copyrighted works are
 26 transmitted over the internet. Id. at ¶ 14. Not only is it the protocol by which infringers of
 27 Plaintiff’s copyright are illegally copying and distributing “All Things Fall Apart,” it is also

28 ¹ The redacted lines in Exhibit B are other copyrighted works which are not the subject of this lawsuit.

1 among the available technologies for the legitimate copying and distribution of copyrighted
 2 motion pictures and other works. Id. The rights to copy and to distribute “All Things Fall Apart”
 3 over the P2P/BitTorrent protocol are exclusive rights enumerated under 17 USC § 106.

4 Unlike the situation in Righthaven LLC, supra, Plaintiff here holds the right to copy and
 5 distribute the copyrighted work limited to the P2P/BitTorrent protocol, not merely the bare
 6 enforcement right or right to sue on the copyright. Whereas Righthaven LLC held only a “right
 7 to sue” on the copyrights, which the Ninth Circuit found was insufficient to confer standing,
 8 Plaintiff does own the rights to copy and to distribute, rights enumerated under 17 USC § 106
 9 which confer standing to Plaintiff. By the Assignment of those enumerated, exclusive rights by
 10 Hannibal Pictures to Plaintiff, Plaintiff has standing to sue for infringement of the copyright in
 11 “All Things Fall Apart” under the standard set by the Ninth Circuit in Righthaven LLC.

12 In light of the foregoing, Plaintiff respectfully requests the Court to grant an Order in
 13 substantially the same form as the attached proposed order, finding that Plaintiff has standing to
 14 sue on the copyright in “All Things Fall Apart” thereby granting Plaintiff’s Ex Parte Application
 15 for Limited Discovery Prior to Rule 26(f) Conference and Plaintiff’s Ex Parte Application for
 16 Extension of Time to Serve Complaint on Doe Defendants and to Conduct the Initial Case
 17 Management Conference.

18
 19 Respectfully submitted,

20 CONTRA PIRACY

21 **DATED:** June 14, 2013

22 By: /s/ Boden Davidson
 23 Boden Davidson, No. 266119
 24
 25
 26
 27
 28

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and service is effectuated by transmission of Notices of Electronic Filing generated by CM/ECF to all counsel of record and pro per parties authorized by the Court to use CM/ECF.

By: /s/ Boden Davidson
Boden N. Davidson, #266119

Exhibit A



Assignment Agreement

This Limited, Exclusive Assignment of Copyright Agreement (hereinafter "Assignment") is made between

Contra Piracy (hereinafter "Contra Piracy") and
Hannibal Inc. d/b/a Hannibal Pictures (hereinafter "Assignor")

in conjunction with the member services agreement between Contra Piracy and Assignor.

Whereas Assignor is a member of Contra Piracy, and Contra Piracy has agreed to provide intellectual property rights management services to Assignor in accordance with the organizational statutes of Contra Piracy; and

Whereas the parties agree that an assignment of exclusive rights in copyrights held by Assignor to Contra Piracy is necessary for Contra Piracy to provide intellectual property rights management services to Assignor; Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

The Assignor holds the exclusive rights to the copyrighted "Work" or "Works" named and described in Appendix 1 in the listed territories, including, but not limited to, the right to copy, the right to distribute, and the right of public broadcast and display. Appendix 1 is herewith expressly integrated into this Assignment.

Assignor hereby grants to Contra Piracy the exclusive rights to copy and distribute the copyrighted Work or Works listed in Appendix 1 in the listed territories over internet-based peer-to-peer BitTorrent networks. These rights granted to Contra Piracy by Assignor are limited to only peer-to-peer BitTorrent copying and distribution and shall not otherwise limit exercise of the exclusive rights in the copyrighted Work or Works by Assignor.

Assignor hereby grants to Contra Piracy the right to enforce the copyright in the Work or Works listed in Appendix 1 in the listed territories. This right includes, but is not limited to, the right to bring representative actions for injunctive relief and damages; to engage in judicial and extrajudicial proceedings to resolve such disputes; to file and withdraw counterclaims; to file and withdraw appeals or to declare a waiver of appeal; to deliver and accept service; to receive and hold money, other valuables and documents; to enter into and to terminate contractual relationships; to make or accept unilateral binding statements; and to grant, in full or in part, substitute power of authority.

The Assignor warrants that the Work or Works do not infringe any valid copyright or other proprietary right of any other person and that the Assignor has the power to convey all rights granted and assigned in this Assignment.

The delay or failure of any party to exercise any of its rights under this Assignment for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise."

Place, Date:

Los Angeles Nov 13, 2012

Signature:

Exhibit B

CONTRA PIRACY

Copyright Holder	Picture	Language	Country of Origin	Release Date	Copyright Registration
Hannibal Pictures	THINGS FALL APART aka ALL THINGS FALL APART	English	USA	December 3, 2011	PAu003545923